LIBRARY
SUPREME COURT, U.S.

FILED
NOV 7 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

Term. No. 600

RUTH M. NOEL and WM. H. FRANTZ, Executors of the Estate of MARSHAL L. NOEL, Deceased,
Petitioners,

v.

LINEA AEROPOSTAL VENEZOLANA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

HARRY NORMAN BALL,
JOSEPH G. FELDMAN,
1010 Packard Building,
Philadelphia 5, Pa.,
LIPPER, SHINN & KELLEY,
527 Fifth Avenue,
New York 17, N. Y.,
Attorneys for Petitioners.

STEPHEN M. FELDMAN,
Of Counsel.

Morris & Lyle, 1108 Bankers Securities Bldg., Phila. 7, Pa.

INDEX

PAGE

Citations of Opinions Below 2

Jurisdiction 2

Question Presented 2

Treaty Involved 2

Statement of the Case 3

Reasons for Granting the Writ 4

Conclusion 13

APPENDIX

A—The Warsaw Convention 14

B—The Record 27

CITATIONS

CASES

American Universal Ins. Co. v. Sterling, 203 F. 2d 159 (3d Cir 1953) 7

Asakura v. City of Seattle, 265 U. S. 332 (1924) 7

Berner v. United Airlines, 149 NYS2d 335 (Sup. Ct. NY County), *aff'd*, 157 NYS2d 884 (App. Div. 1st Dep't 1956) 5, 9, 11, 12

Choy v. Pan-American Airways Company, 1 Am. Mar. Cas. 483 (SDNY 1941) 11

Chutter v. KLM Royal Dutch Airlines, 132 F. Supp. 611 (SDNY 1953) 5, 12

Grey v. American Airlines, Inc., 227 F. 2d 282 (2d Cir 1955) 5, 12

Haasman v. Pacific Alaska Air Express, 100 F. Supp. 1 (D. Alaska 1951), *aff'd sub nom.* Des Maris v. Beckman, 198 F. 2d 550 (9th Cir. 1952) 10

PAGE

Indemnity Insurance Company of North America v. Pan-American Airways, Inc., 58 F. Supp. 338 (SDNY 1944) 12

Komlos v. Compagnie Nationale Air France, 111 F. Supp. 393 (SDNY 1952, *reversed on other grounds*, 209 F. 2d 436 (2d Cir. 1953), *cert. denied*, 348 US 820 (1954) 11

Salamon v. Koninklijke Luchtvaart Maatschappij, N.V., 107 NYS2d 768 (Sup. Ct. NY County 1951), *aff'd*, 281 App. Div. 965, 120 NYS2d 917 (1st Dep't 1953) 11

Supine v. Compagnie Nationale Air France, 100 F. Supp. 214 (EDNY 1951) 12

Wilson v. Transocean Airlines, 121 F. Supp. 85 (ND Cal. 1954) 7

Wyman v. Pan American Airways, Inc., 181 Misc. 963, 43 NYS2d 420 (Sup. Ct. NY County 1943), *aff'd without opinion*, 267 App. Div. 947, 48 NYS2d 459 (1st Dep't 1943), *aff'd without opinion*, 293 NY 878, 59 NE2d 785 (1944), *cert. denied*, 324 US 882 (1945) 12

CONSTITUTION

Article VI, Clause 2 7

TREATIES

The Warsaw Convention 49 STAT. 3000 (1934) 2

STATUTES

Death on the High Seas Act, 41 STAT. 537, 46 USC § 761 (1920) 7, 8

MISCELLANEOUS

[1934] US Av. R. 240 9

IN THE

SUPREME COURT OF THE UNITED STATES.

Term. No.

RUTH M. NOEL and WM. H. FRANTZ, Executors of the Estate of MARSHAL L. NOEL, Deceased,

Petitioners,

v.

LINEA AEROPOSTAL VENEZOLANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit in the above captioned case.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court, reported in 144 F. Supp. 359, is printed in Appendix B hereto, *infra*. The opinion of the Court of Appeals, reported in 247 F. 2d 677, is printed in Appendix B hereto, *infra*.

JURISDICTION.

The judgment of the Court of Appeals for the Second Circuit was made and entered on August 9, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

QUESTION PRESENTED.

Whether the Warsaw Convention, a treaty of the United States, creates an independent cause of action against the air carrier for death incurred on board an international flight.

TREATY INVOLVED.

The treaty involved in this case is the Warsaw Convention, 49 STAT. 3000, Article 17 of which provides:

> "The carrier shall be liable for damages sustained in the event of the death or wounding of a passenger or

any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking."

The Warsaw Convention in its entirety is printed in Appendix A hereto, *infra*, at p. 14.

STATEMENT OF THE CASE.

Petitioners' decedent died while a passenger on respondent's aircraft on a flight from New York City to Venezuela. Petitioners brought suit for $3,000,000 on the law side of the District Court for the Southern District of New York, alleging in their complaint that decedent died while the airplane was in the airspace above the Atlantic Ocean at a point approximately 30 miles from Asbury Park, New Jersey, as a result of respondent's gross negligence, willful misconduct and recklessness.

Three counts are set forth in Petitioners' complaint: (1) a diversity action, (2) an action under the Death on the High Seas Act, and (3) an action under the Warsaw Convention. The jurisdiction of the District Court was invoked because of diversity of citizenship in count one, because the action was based on a statute of the United States in count two, and because the action was based on a treaty of the United States in count three. The District Court dismissed all three counts of the complaint on the grounds that suit under the Death on the High Seas Act may be brought only in admiralty if at all in this case, and that no independent cause of action is created by the Warsaw Convention. The Court of Appeals for the Second Circuit affirmed the District Court. This petition for certiorari follows.

REASONS FOR GRANTING THE WRIT.

I. The Court below has disregarded the terms of the Warsaw Convention, a Treaty of the United States, which creates an independent cause of action for international flights.

An entire scheme of liability with all the attributes of an independent cause of action is set up by Chapter III of the Warsaw Convention, entitled "*Liability of the Carrier,*" Article 17 of which provides for the basic cause of action, stating—

> "*The carrier shall be liable for damages* sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking." (Emphasis added.)

Succeeding Articles of Chapter III establish limitations and procedures for enforcement of the basic liability, providing for: (1) The carrier's bearing the burden of proof of showing its own freedom from negligence;[1] (2) The affirmative defense of contributory negligence;[2] (3) A limitation of the carrier's liability to approximately $8,300 unless the passenger can prove willful misconduct by the carrier;[3] (4) application of the *lex fori* to determine which persons have the right to maintain the action for damages and what the respective rights of these persons are;[4] (5) A survival action

---

[1] WARSAW CONVENTION, Article 20 (1).

[2] Id., Article 21.

[3] Id., Articles 22 (1) and 25.

[4] Id., Article 24 (2).

against the estate of the person liable in case of his death;[5] (6) Rules of venue;[6] (7) Application of the rules of procedure of the forum;[7] and (8) a two year period of limitations.[8]

Each of these rules which define and explain the basic liability has in turn been given effect by the courts, *e. g.*, (1) The $8,300 limitation on the carrier's liability in *Grey v. American Airlines, Inc.*, 227 F. 2d 282 (2d Cir. 1955); (2) The venue rules in *Berner v. United Airlines*, 149 N. Y. S. 2d 335 (Sup. Ct. N. Y. County), *affirmed* 157 N. Y. S. 2d 884 (App. Div. 1st Dep't 1956); (3) The affirmative defense of contributory negligence in *Chutter v. KLM Royal Dutch Airlines*, 132 F. Supp. 611 (S. D. N. Y. 1955); and (4) The two year period of limitations in the *Chutter* case, *supra*. Logic demands that if the procedural aspects of Chapter III be sustained, effect also be given to the substantive rights created there.

Assuming, *pro arguendo*, that the language of Article 17 is ambiguous in relation to the creation of an independent cause of action, Article 27 is unequivocal in its creation of a survival action in case of the death of the person originally liable.

> "In the case of the death of the person liable, *an action for damages lies* in accordance with the terms of this convention against those legally representing his estate." (Emphasis added.)

It seems inconceivable that the drafters of the convention would provide for a cause of action against the estate of the tort feasor and not against the tort feasor himself.

---

[5] Id., Article 27.

[6] Id., Article 28 (1).

[7] Id., Article 28 (2).

[8] Id., Article 29.

II. The decision of the Court below will have the far reaching effect of making the vast number of international air travellers potential victims of a situation in which they will be left without a remedy for injury or death, regardless of how flagrant the misconduct of the air carrier may be.

If the holding that the Warsaw Convention does not create an independent cause of action is sustained, a great void will be left in the law wherein the families of the tens of thousands of American passengers on international flights may be left without a remedy for death sustained as a result of negligence by the air carrier no matter how flagrant that negligence may be. In the first place, the carrier would be absolved from liability whenever the death occurs where there is no *lex loci delicti* providing for a wrongful death action, as for example where death of a passenger occurs when a plane crashes into a territory which has no statute creating a wrongful death action, even though that territory may adhere to the Warsaw Convention. Secondly, the carrier would be absolved from liability whenever the death occurs in an obscure place, near the border of two countries and the wreckage is not found, as for example in a jungle or mountainous region. In such a case, even assuming both countries have statutes creating wrongful death actions, the carrier could block an action for wrongful death under the statute of either country by forcing the plaintiff to prove that the death did not occur in the other country.

Two possible remedies—one under the Death on the High Seas Act,[9] the other under the Warsaw Convention—were available to petitioners in the instant case for decedent's death, which they allege to have happened in the air space above the Atlantic Ocean at a point approximately 30 miles from Asbury Park, New Jersey. It is axiomatic that no

---

[9] 41 STAT. 537, 46 U. S. C. §761 **et seq.** (1920).

action for wrongful death lies at common law[10] and it has been held that state death statutes have no application to deaths incurred beyond the territorial waters of the state.[11] The opinion of the court below in effect bars petitioners from both of these actions, leaving them remediless even with respect to the $8,300 to which the Convention says they are entitled merely upon proof that decedent died on board an international flight. And under the allegations of petitioners' complaint, which for purposes of this petition must be assumed to be true,[12] petitioners were damaged in the sum of $3,000,000 as a result of respondent's gross negligence, willful misconduct and recklessness. The holding of the court below is in direct contradiction of Article 17 of the Warsaw Convention, part of the supreme law of the land,[13] which proclaims that—"*The carrier shall be liable for damages*" if the decedent died while on board an international flight.

Said the court below—"Thus, regardless of whether the Federal Death on the High Seas Act provides a remedy, Article 17 does not."[14] With respect to the right of action under the Death on the High Seas Act the court below stated that the extension of that statute to death incurred in the air space above the ocean "raises grave constitutional questions as to the permissible scope of admiralty jurisdiction,"[15] at the same time holding that such cause of action

---

[10] **See, Wilson v. Transocean Airlines,** 121 F. Supp. 85, 87 (N. D. Cal. 1954).

[11] **Wilson v. Transocean Airlines,** 121 F. Supp. 85, 87-91 (N. D. Cal. 1954).

[12] **American Universal Ins. Co. v. Sterling,** 203 F. 2d 159, 163 (3d Cir. 1953).

[13] CONSTITUTION, Article VI, Clause 2; see also, **Asakura v. City of Seattle,** 265 U. S. 332, 341 (1924).

[14] Opinion of Court of Appeals in instant case, Appendix B, 247 F. 2d 680.

[15] Opinion of Court of Appeals in instant case, Appendix B, 247 F. 2d 680, n. 4.

would not be cognizable on the law side of the court, under the wording of the Act.[16]

Therefore, the court below has in effect included the vast area above the oceans of the world in the category of *loci delicti* with no law creating a cause of action for wrongful death, precluding recovery for wrongful death in the air space above the ocean, and giving the air carrier the additional out of putting plaintiffs to the task of proving that decedents died on the ocean rather than in the air space above it, a virtually impossible task, where, as is most often the case, the plane disappears without a trace.

III. The purpose of the Warsaw Convention—uniform regulation of the liability of international air carriers—would be defeated unless the Convention is held to create an independent cause of action.

"The advantage of regulating in a uniform manner the conditions of international transportation by air in respect . . . of the liability of the carrier,"[17] stated in the Warsaw Convention to be its primary purpose, would be defeated almost entirely if the holding of the court below that the convention does not create a cause of action is sustained.

If there were an explosion on an airplane over the water killing some of the passengers, and the remainder of the passengers were killed when the plane, as a result of the

---

[16] The pertinent part of the Death on the High Seas Act reads:

"That whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent **may** maintain a suit for damages in the district courts of the United States, **in admiralty**. . . . (41 STAT. 537, 46 U. S. C. §761 (1920)). (Emphasis added.)

[17] WARSAW CONVENTION, preamble.

explosion, crashed into a territory having a cause of action for wrongful death, the first group of passengers would have no cause of action and the second group would have a cause of action for deaths caused by the same act on the part of the carrier. It is not conceivable that where the convention says "The carrier shall be liable for damages,"[18] it was intended that liability would depend on the chance that the local law would provide a remedy.

IV. The balance which the framers of the Warsaw Convention sought to strike between the rights of the carrier and the passengers would be seriously upset to the detriment of the passengers by a holding that the Convention creates no cause of action.

The framers of the Warsaw Convention intended to have the Convention strike a balance between the rights of the carriers, on one hand, to encourage, what at that time was an infant industry, and the rights of the passengers, on the other hand, to make up for the rights which were given to the carrier.[19] Secretary of State Hull, in his letter to the President, dated March 31, 1934, recommending the adherence of the United States to the Warsaw Convention, wrote—

> "It will be observed that while under the terms of the convention passengers and shippers acquire certain definite rights in international air transportation, the aerial carriers obtain the benefit of a limitation of liability."[20]

---

[18] **Id.**, Article 17.

[19] **See Berner v. United Airlines, Inc.**, 149 N. Y. S. 2d 335, 342 (Sup. Ct. N. Y. County 1956), aff'd 157 N. Y. S. 2d 884 (App. Div. 1st Dep't 1956).

[20] [1934] U. S. Av. R. 240, 243.

The carriers gained the following advantages at the Convention: Unless willful misconduct is proved by the plaintiff, the liability of the carrier is limited to approximately $8,300 for the death or injury of each passenger. The impact of this limitation on liability is recognized only when it is remembered that direct proof of willful misconduct is absent in most air accidents, because in the vast majority of cases all the eye witnesses are killed.

The passenger, on the other hand, gained the following advantages: He is entitled to recovery of up to approximately $8,300 for death or personal injury without being put to the task of proving negligence by the carrier. However, that this is a real advantage is doubtful in light of the cases which have held that where an airplane disappears without a trace, an action for negligence lies against the carrier based on the theory of *res ipsa loquitur*.[21] Jurisdiction over the air carrier exists at the place where the carrier has a place of business, through which the ticket was bought, regardless of whether the carrier is doing business there or not. However, if the passenger has no cause of action, these so called advantages amount to nothing. But the carrier's limitation of liability will operate in its favor in every suit against the carrier.

V. While this Court has never ruled on the question, there is some judicial authority for the proposition that Article 17 creates a cause of action.

Neither this court, nor for that matter any court, before the decision in the instant case has squarely held that the Warsaw Convention creates no independent cause of action. On the other hand, there is authority holding that the Warsaw Convention creates a cause of action.

---

[21] **E. g., Haasman v. Pacific Alaska Air Express**, 100 F. Supp. 1 (D. Alaska 1951), **aff'd sub nom., Des Maris v. Beckman**, 198 F. 2d 550 (9th Cir. 1952).

In *Salamon v. Koninklijke Luchtvaart Maatschappij, N. V.*, 107 N. Y. S. 2d 768 (Sup. Ct. N. Y. County 1951), *affirmed* 281 App. Div. 965, 120 N. Y. S. 2d 917 (1st Dep't 1953),[22] the Supreme Court of New York held that Article 17 of the Warsaw Convention created a cause of action for injury or death on board international airflights covered by the convention. The holding is based on the wording of the treaty and on two earlier New York cases in which it was held that the Treaty was self executing, requiring no implementation, and that the Treaty overrides and supplants local law.

In *Komlos v. Compagnie Nationale Air France*, 111 F. Supp. 393 (S. D. N. Y. 1952), *reversed on other grounds* 209 F. 2d 436 (2d Cir. 1953), *cert. denied* 348 U. S. 820 (1954), the District Court for the Southern District of New York stated by way of dictum that: (1) If the locus delicti has no wrongful death action, the forum of a state adhering to the treaty could allow a suit under Article 17 of the Treaty, and "under those circumstances it might be said that Article 17 created the right of action for wrongful death," And (2) if the locus delicti adheres to the Convention but otherwise has no action for wrongful death, a forum of the locus delicti could allow suit under Article 17 of the Convention.[23] Under the facts presented to it in the *Komlos* case the District Court held that since the lex loci delicti provided a cause of action for wrongful death, it was not necessary to resort to Article 17.

In *Choy v. Pan-American Airways Company*, 1 Am. Mar. Cas. 483 (S. D. N. Y. 1941), the District Court for the Southern District of New York held that an action could not be brought under Article 17 of the Convention since there was no enabling act implementing the Convention, at the same

---

[22] Cited with approval in **Berner v. United Airlines, Inc.**, 149 N. Y. S. 2d 335, 342-3 (Sup. Ct. N. Y. County 1956), **aff'd** 157 N. Y. S. 2d 884 (App. Div. 1st Dep't 1956).

[23] **Komlos** case at page 402.

time indicating that it felt Article 17 except for the absence of implementation created a cause of action.[24] Cases since the *Choy* case have consistently held various parts of the Warsaw Convention to be self executing.[25]

The court below in the instant case, without relying on lack of implementation for a reason, held that Article 17 of the Convention does not create a cause of action because the language of that Article does not purport to create a cause of action. In this decision the court below stands completely alone.[26]

---

[24] The court in the **Choy** case although denying plaintiff the right to bring his action under Article 17 of the Warsaw Convention, allowed suit on the civil side of the District Court under the Death on the High Seas Act, on the ground that the language of that Act—"may maintain a suit for damages in the district courts of the United States, in admiralty" (41 STAT. 537, 46 U. S. C. §761 (1920))—did not restrict suit to the admiralty forum.

[25] **Indemnity Insurance Company of North America v. Pan American Airways, Inc.**, 58 F. Supp. 338 (S. D. N. Y. 1944); see **Grey, Berner,** and **Chutter** cases cited **supra.**

[26] **But c. f., Supino v. Compagnie Nationale Air France,** 100 F. Supp. 214 (E. D. N. Y. 1951), wherein the parties conceded that the Warsaw Convention did not create a cause of action. In this case the air crash was in Portuguese territory and plaintiff was relying on Portuguese law so the issue was not presented to the court. And **Wyman v. Pan American Airways, Inc.**, 181 Misc. 963, 43 N. Y. S. 2d 420 (Sup. Ct. N. Y. County 1943), **aff'd without opinion** 267 App. Div. 947, 48 N. Y. S. 2d 459 (1st Dep't), **aff'd without opinion** 293 N. Y. 878, 59 N. E. 2d 785 (1944), **cert. denied** 324 U. S. 882 (1945), wherein the court said in relation to the question of whether plaintiff was entitled to interest on his judgment—"No new substantive rights were created by the Warsaw Convention. . . . (at 423). Plaintiff argued that the Convention did **not** apply in order to escape the $8300 limitation.

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

HARRY NORMAN BALL,
JOSEPH G. FELDMAN,
1010 Packard Building,
Philadelphia 2, Pa.,
LIPPER, SHINN & KEELEY,
527 Fifth Avenue,
New York 17, N. Y.,
Attorneys for Petitioners.

STEPHEN M. FELDMAN,
Of Counsel.

APPENDIX A.

WARSAW CONVENTION

(49 Stat. 3000 *et seq.*)

Convention and additional protocol between the United States of America and other powers relating to International Air Transportation. Concluded at Warsaw, October 12, 1929; adherence advised by the Senate, with reservation, June 15, 1934; adherence declared by the President with reservation, June 27, 1934; declaration of adherence of the United States deposited at Warsaw, July 31, 1934; proclaimed, October 29, 1934.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS a convention for the unification of certain rules relating to international transportation by air and an additional protocol thereto relating to Article 2 of the convention, were signed at Warsaw by the respective plenipotentiaries of certain countries, the originals of which convention and additional protocol, done at Warsaw, in the French language, October 12, 1929, and left open for signature until January 31, 1930, are word for word as follows:

[French Text Omitted]

Translation

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL TRANSPORTATION BY AIR

THE PRESIDENT OF THE GERMAN REICH * * *

* * * * *

Having recognized the advantage of regulating in a uniform manner the conditions of international transportation by air in respect of the documents used for such transportation and of the liability of the carrier,

Have nominated to this end their respective Plenipotentiaries, who, being thereto duly authorized, have concluded and signed the following convention:

CHAPTER I. SCOPE—DEFINITIONS

Article 1

(1) This convention shall apply to all international transportation of persons, baggage, or goods performed by aircraft for hire. It shall apply equally to gratuitous transportation by aircraft performed by an air transportation enterprise.

(2) For the purposes of this convention the expression "international transportation" shall mean any transportation in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the transportation or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another power, even though that power is not a party to this convention. Transportation without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party shall not be deemed to be international for the purposes of this convention.

(3) Transportation to be performed by several successive air carriers shall be deemed, for the purposes of this

convention, to be one undivided transportation, if it has been regarded by the parties as a single operation, whether it has been agreed upon under the form of a single contract or of a series of contracts, and it shall not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate, or authority of the same High Contracting Party.

Article 2

(1) This convention shall apply to transportation performed by the state or by legal entities constituted under public law provided it falls within the conditions laid down in article 1.

(2) This convention shall not apply to transportation performed under the terms of any international postal convention.

CHAPTER II. TRANSPORTATION DOCUMENTS

SECTION I—PASSENGER TICKET

Article 3

(1) For the transportation of passengers the carrier must deliver a passenger ticket which shall contain the following particulars:

(*a*) The place and date of issue;

(*b*) The place of departure and of destination;

(*c*) The agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the transportation of its international character;

(*d*) The name and address of the carrier or carriers;

(*e*) A statement that the transportation is subject to the rules relating to liability established by this convention.

(2) The absence, irregularity, or loss of the passenger ticket shall not affect the existence or the validity of the contract of transportation, which shall none the less be subject to the rules of this convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this convention which exclude or limit his liability.

* * * * *

CHAPTER III. LIABILITY OF THE CARRIER

Article 17

The carrier shall be liable for damages sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier shall be liable for damage sustained in the event of the destruction or loss of, or of damage to, any checked baggage or any goods, if the occurrence which caused the damage so sustained took place during the transportation by air.

(2) The transportation by air within the meaning of the preceding paragraph shall comprise the period during which

the baggage or goods are in charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.

(3) The period of the transportation by air shall not extend to any transportation by land, by sea, or by river performed outside an airport. If, however, such transportation takes place in the performance of a contract for transportation by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the transportation by air.

Article 19

The carrier shall be liable for damage occasioned by delay in the transportation by air of passengers, baggage, or goods.

Article 20

(1) The carrier shall not be liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(2) In the transportation of goods and baggage the carrier shall not be liable if he proves that the damage was occasioned by an error in piloting, in the handling of the aircraft, or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the transportation of passengers the liability of the carrier for each passenger shall be limited to the sum of 125,000 francs. Where, in accordance with the law of the court to which the case is submitted, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the transportation of checked baggage and of goods, the liability of the carrier shall be limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier shall be limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams of gold at the standard of fineness of nine hundred thousandths. These sums may be converted into any national currency in round figures.

Article 23

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this convention shall be null and void, but the nullity of any such provision shall not involve the nullity of the whole contract, which shall remain subject to the provisions of this convention.

Article 24

(1) In the cases covered by articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this convention.

(2) In the cases covered by article 17 the provisions of the preceding paragraph shall also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his willful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to willful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier acting within the scope of his employment.

Article 26

(1) Receipt by the person entitled to the delivery of baggage or goods without complaint shall be *prima facie* evidence that the same have been delivered in good condition and in accordance with the document of transportation.

(2) In case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and at the latest, within 3 days from the date of receipt in the case of baggage and 7 days from the date of receipt in the case of goods. In case of delay the complaint must be made at the latest within 14 days from the date on which the baggage or goods have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of transportation or by separate notice in writing dispatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this convention against those legally representing his estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

(2) Questions of procedure shall be governed by the law of the court to which the case is submitted.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the transportation stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court to which the case is submitted.

Article 30

(1) In the case of transportation to be performed by various successive carriers and falling within the definition set out in the third paragraph of article 1, each carrier who accepts passengers, baggage or goods shall be subject to the rules set out in this convention, and shall be deemed to be one of the contracting parties to the contract of transportation insofar as the contract deals with that part of the transportation which is performed under his supervision.

(2) In the case of transportation of this nature, the passenger or his representative can take action only against the carrier who performed the transportation during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or goods, the passenger or consignor shall have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery shall have a right of action against the last carrier, and further, each may take action against the carrier who performed the transportation during which the destruction, loss, damages, or delay took place. These carriers shall be jointly and severally liable to the passenger or to the consignor or consignee.

Chapter IV. Provisions Relating to Combined Transportation

Article 31

(1) In the case of combined transportation performed partly by air and partly by any other mode of transportation, the provisions of this convention shall apply only to the transportation by air, provided that the transportation by air falls within the terms of article 1.

(2) Nothing in this convention shall prevent the parties in the case of combined transportation from inserting in the document of air transportation conditions relating to other modes of transportation, provided that the provisions of this convention are observed as regards the transportation by air.

Chapter V. General and Final Provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the transportation of goods arbitration clauses shall be allowed, subject to this convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of article 28.

Article 33

Nothing contained in this convention shall prevent the carrier either from refusing to enter into any contract of transportation or from making regulations which do not conflict with the provisions of this convention.

Article 34

This convention shall not apply to international transportation by air performed by way of experimental trial by air navigation enterprises with the view to the establishment of regular lines of air navigation, nor shall it apply to transportation performed in extraordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression "days" when used in this convention means current days, not working days.

Article 36

This convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

(1) This convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which shall give notice of the deposit to the Government of each of the High Contracting Parties.

(2) As soon as this convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties which shall have ratified and the High Contracting Party which deposits its instrument of ratification on the ninetieth day after the deposit.

(3) It shall be the duty of the Government of the Republic of Poland to notify the Government of each of the High Contracting Parties of the date on which this convention comes into force as well as the date of the deposit of each ratification.

Article 38

(1) This convention shall, after it has come into force, remain open for adherence by any state.

(2) The adherence shall be effected by a notification addressed to the Government of the Republic of Poland, which shall inform the Government of each of the High Contracting Parties thereof.

(3) The adherence shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

(1) Any one of the High Contracting Parties may denounce this convention by a notification addressed to the Government of the Republic of Poland, which shall at once inform the Government of each of the High Contracting Parties.

(2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the party which shall have proceeded to denunciation.

Article 40

(1) Any High Contracting Party may, at th e time of signature or of deposit of ratification or of adherence, declare that the acceptance wihch it gives to this convention does not apply to all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or its authority, or any other territory under its suzerainty.

(2) Accordingly any High Contracting Party may subsequently adhere separately in the name of all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority or any other territory under its suzerainty which have been thus excluded by its original declaration.

(3) Any High Contracting Party may denounce this convention, in accordance with its provisions, separately or for all or any of its colonies, protectorates, territories under mandate, or any other territory subject to its sovereignty or to its authority, or any other territory under its suzerainty.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this convention to call for the assembling of a new international conference in order to consider any improvements which may be made in this convention. To this end it will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such conference.

This convention, done at Warsaw on October 12, 1929, shall remain open for signature until January 31, 1930.

* * * * *